

Retaliatory Actions and Evictions

A landlord may try to evict a tenant because the tenant has exercised a legal right (for example, using the repair and deduct remedy), or has complained about a problem in the rental unit. Or the landlord may raise the tenant's rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right.

In either situation, the landlord's action is said to be **retaliatory** because the landlord is punishing the tenant for the tenant's exercise of a legal right. The law offers tenants protection from the retaliatory eviction and other retaliatory acts. Civil Code § 1942.5.

The law assumes that the landlord has a retaliatory motive if the landlord seeks to evict the tenant (or takes other retaliatory action) within six months after the tenant has exercised any of the following tenant rights:

- Using the repair and deduct remedy, or telling the landlord that the tenant will use the repair and deduct remedy.
- Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice.
- Filing a lawsuit or beginning arbitration based on the condition of the rental unit.
- Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend against eviction on the basis of retaliation, the tenant must prove that he or she exercised one or more of these rights within the 6 month period, that the tenant's rent is current, and that the tenant has not used the defense of retaliation more than once in the past 12 months. If the tenant produces all of this evidence, then the landlord must produce evidence that he or she did not have a retaliatory motive. If both sides produce

the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

A tenant can also assert a retaliation as a defense to eviction if the tenant has lawfully organized or participated in a tenants' organization or protest, or has lawfully exercised any other legal right. In these circumstances, the tenant must prove that he or she engaged in the protected activity, and that the landlord's conduct was retaliatory.

If you feel that your landlord has retaliated against you because of an action that you've properly taken against your landlord, talk with an attorney or legal aid organization. An attorney also may be able to advise you about other defenses.

Retaliatory discrimination

A landlord, managing agent, real estate broker, or salesperson violates California's Fair Employment and Housing Act by harassing, evicting, or otherwise discriminating against a person in the sale or renting of housing when the "dominant purpose" is to retaliate against a person who has done any of the following:

- Opposed practices that are unlawful under the Act;
- Informed law enforcement officials of practices that the person believes are unlawful under the Act; or
- Aided or encouraged a person to exercise rights protected by the Act.

A tenant who can prove that the landlord's eviction action is based on a discriminatory motive has a defense to the unlawful detainer action (*eviction*). A tenant who is the victim of retaliatory discrimination also has a cause of action for *damages* under the Fair Employment and Housing Act.¹

California Civil Code § 1942.5 (2005)

§ 1942.5. Prohibition against certain retaliatory acts by lessor against lessee for exercising rights; Timeframe; Civil action; Damages; Attorney's fees

- (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate agency as to tenability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:
- (1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral complaint to the lessor regarding tenability .
 - (2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenability .
 - (3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice .
 - (4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenability .
 - (5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

- (b) A lessee may not invoke subdivision (a) more than once in any 12-month period.
- (c) It is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.
- (d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.
- (e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.
- (f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:
- (1) The actual damages sustained by the lessee.
 - (2) Punitive damages in an amount of not less than one hundred dollars (\$ 100) nor more than two thousand dollars (\$ 2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.
- (g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.
- (h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

¹ *California Practice Guide, Landlord-Tenant, Paragraphs 7:205, 7:391-94 (Rutter Group 2002).*